

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RICHARD T. GASDIA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-970421, SC-970421A, SC-970421B,
and SC-970421C

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 14, 2000, to consider Sworn Complaints SC-970421, SC-970421A, SC-970421B, and SC-970421C filed against Richard T. Gasdia, Respondent. A quorum of the commission was present. The commission voted to accept jurisdiction of the complaints but to refuse jurisdiction of the allegations relating to campaign finance reports required to be filed before April 11, 1995.

Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Sections 252.003(a)(2) and 253.037(b), Election Code, and Section 20.413(b), Ethics Commission Rules, laws and a rule administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

Four complainants filed identical complaints against the respondent in his capacity as campaign treasurer for a general-purpose committee. In this order and agreed resolution, "complainant" refers to all four complainants.

The complainant alleges that the respondent, the campaign treasurer of a general-purpose committee, violated Title 15, Election Code, by:

1. failing to include on the original or amended campaign treasurer appointments each general-purpose committee to whom the committee intended to make political contributions;
2. making a political contribution to a general-purpose committee not listed on the campaign treasurer appointment of the respondent's committee; and
3. failing to identify candidates supported and failing to disclose the principal occupation of contributors.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. At all times relevant to this complaint, the respondent was the campaign treasurer of Houston Republican Forum, a general-purpose committee.
2. Commission records show that on June 24, 1988, Houston Republican Forum filed a campaign treasurer appointment that did not list any general-purpose committees to whom the respondent's committee intended to make political contributions.
3. On April 22, 1994, the previous campaign treasurer filed an amended campaign treasurer appointment naming the respondent as the campaign treasurer of Houston Republican Forum.
4. Commission records show that the respondent, as campaign treasurer of Houston Republican Forum, filed the committee's January 1995 report fourteen days late and the July 1997 report twenty-three days late and paid a \$100 fine for each report.
5. On the committee's January 1997 semiannual report, the respondent reported making a political contribution on July 2, 1996, in the amount of \$332 to Conservative Republicans of Harris County, a general-purpose committee, and listed the purpose of the expenditure as "mailers." Conservative Republicans of Harris County disclosed the acceptance of that contribution on its January 1997 semiannual report.
6. Commission records disclose the receipt of an amended campaign treasurer appointment from the respondent on September 15, 1997, disclosing his committee's intention to make a political contribution to Conservative Republicans of Harris County. This amendment was filed 17 months after the contribution was made.
7. The respondent's July 1995 semiannual report does not list any candidates supported by the committee, nor does it show that the respondent checked a box on the form to disclose that the committee supports candidates classified by party. The report discloses total political contributions of \$617.75, all of which are \$50 or less, and total political expenditures of \$2,431.21. The expenditures were made for purposes such as "mail," "printing," "luncheon," and "telemarketing." The report does not itemize any contributions.
8. The respondent's January 1996 and July 1996 semiannual reports disclose no reportable activity.
9. The respondent's January 1997 semiannual report shows that no contributions were accepted during the reporting period and that an expenditure of \$332 was made to Conservative Republicans of Harris County, a general-purpose committee.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

1. The campaign treasurer appointment by a general-purpose committee is required to include the full name and address of each general-purpose committee to whom the committee intends to make political contributions. Section 252.003(a)(2), Election Code. If any information on the campaign treasurer appointment changes, the campaign treasurer must file an amended appointment with the commission no later than the thirtieth day after the date the change occurs. Section 20.413(b), Ethics Commission Rules.
2. A general-purpose committee may not knowingly make a political contribution to another general-purpose committee unless the recipient committee is listed in the campaign treasurer appointment of the contributor committee. Section 253.037(b), Election Code.
3. The respondent filed an affidavit stating that at the time of the contribution, the recipient committee was properly listed on the respondent's committee's campaign finance report and that there was no effort to hide the contribution. The respondent admits in his affidavit that he failed to amend the campaign treasurer appointment to add the recipient committee before making the contribution to Conservative Republicans of Harris County.
4. Ethics Commission rules prohibit the commission from considering an alleged violation that occurred before January 1, 1992. Section 12.5, Ethics Commission Rules. Commission records show that on June 24, 1988, the respondent's committee filed a campaign treasurer appointment that did not list any general-purpose committees to whom the respondent's committee intended to make political contributions. Any failure at that time to include the information relating to recipient general-purpose committees would be outside of the commission's sworn complaint jurisdiction.
5. The respondent should have filed an amended campaign treasurer appointment disclosing the committee's intention to make a contribution to Conservative Republicans of Harris County. The amendment should have been filed before the contribution was made. The respondent failed to file an amended campaign treasurer appointment before making the contribution. Therefore, there is credible evidence that the respondent violated Sections 252.003(a)(2) and 253.037(b), Election Code, and Section 20.413(b), Ethics Commission Rules.
6. Each report filed by the campaign treasurer of a general-purpose committee is required to include the name of each identified candidate or classification by party of candidates supported by the committee and the name of each identified officeholder or classification by party of officeholders assisted by the committee. Section 254.151(4) and (5), Election Code.
7. The respondent's affidavit states that Section 254.151(4) and (5), Election Code, requiring the name of each identified candidate or classification by party of candidates supported by the committee and the name of each identified officeholder or classification by party of officeholders assisted by the committee, are both satisfied by classification by party of candidates supported by the committee. His affidavit states that the name of the

respondent's committee contained a clear and unambiguous classification by party of candidates supported, and that the classification by party of candidates supported was unmistakably clear on the face of the report.

8. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Section 12.5(3), Ethics Commission Rules. A person commits an offense that is a Class C misdemeanor if the person knowingly fails to file a campaign finance report on time or fails to include required information in a campaign finance report. Section 254.041, Election Code. The statute of limitations for Class C misdemeanors is two years from the date of the commission of the offense. Article 12.02, Code of Criminal Procedure.
9. The complaint was filed April 11, 1997; any alleged offenses that occurred before April 11, 1995, are therefore not within the commission's sworn complaint jurisdiction. Thus, allegations relating to the four reports filed in 1994 and to the report filed in January 1995 are not within the commission's sworn complaint jurisdiction.
10. As to the allegations concerning reports not barred by the statute of limitations, the committee's name satisfies the legal requirement that each report identify candidates supported by party classification. Therefore, there is credible evidence that the respondent did not violate Sections 254.151(4) and (5), Election Code.
11. Each report filed by the campaign treasurer of a general-purpose committee is also required to include the principal occupation of each person from whom political contributions that in the aggregate exceed \$50 are accepted during the reporting period. Section 254.151(6), Election Code.
12. As to allegations concerning reports not barred by the statute of limitations, the respondent's reports do not itemize any contributions, and therefore there is credible evidence that the respondent did not violate Section 254.151(6), Election Code.

V. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling these sworn complaints.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraph 5, if it is necessary

to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140 of the Government Code, and may be disclosed by members and staff of the commission

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, after considering the fact that the respondent had previous reporting violations, and after considering the sanction necessary to deter future violations, the commission imposes a civil penalty of \$500 for the violations described under Section IV, Paragraph 5.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-970421, SC-970421A, SC-970421B, and SC-970421C;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the civil penalty of \$500 to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than February 11, 2000; and
4. that the executive director shall promptly refer SC-970421, SC-970421A, SC-970421B, and SC-970421C to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-970421, SC-970421A, SC-970421B, and SC-970421C as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2000.

Richard T. Gasdia, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director